



DEPARTMENT OF THE NAVY
BASE REALIGNMENT AND CLOSURE
PROGRAM MANAGEMENT OFFICE WEST
33000 NIXIE WAY, BLDG 50 Suite 207
SAN DIEGO, CA 92147

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Ser BPMOW.hmw/108
April 15, 2020

Mr. Mark Chalpin
Law Office of Mark G. Chalpin, Esq.
116 Billingsgate Lane
Gaithersburg, MD 20877

Dear Mr. Chalpin:

This correspondence is in regard to your Freedom of Information Act (FOIA) request in which you seek the following:

Any communication between CH2M and the Navy related to comments, edits or additions to the "Draft Radiological Report Findings for Parcel B and G Soils (September 2017) or the Parcel G Removal Site Evaluation Work Plan (Draft June, Draft Final November 2018, and Final June 2019).

Your request was submitted on July 15, 2019, received by this office on July 31, 2019 and assigned file number DON-NAVY-2019-009055. By email correspondence dated August 23, 2019, you agreed to pay our estimated fee \$1,440. By correspondence dated September 2, 2019, we provided a final determination regarding your request, noting that responsive documents would be released as processing was completed. By correspondence dated October 24, 2019, we made a first interim release of responsive documents via FOIA Online, requested payment of fees already incurred, and informed you that additional responsive documents would be processed for release upon your agreement to pay additional fees. We have received your payment for fees incurred for processing documents in the first interim release. By emailed dated November 7, 2019, you agreed to pay an additional fee amount of \$1,200 for processing the remaining responsive documents. On November 27, 2019, you filed an administrative appeal, challenging the application of FOIA exemptions to documents withheld in the first interim release. On January 15, 2020, the Deputy General Counsel for the Department of the Navy remanded your appeal to this office for reconsideration. This letter documents our reconsideration of documents withheld in the first interim release, and provides a second and final release of responsive documents for this FOIA request.

Appeal / Reconsideration of Documents Withheld in First Interim Release:

Upon further review of all responsive documents reviewed in the first interim release, our office has decided the following:

Encl 1 – This file contains eight emails previously withheld in full. They are now released in full.

Encl 2 – This file contains three emails previously withheld in full. They are now

partially exempt from disclosure under FOIA Exemption 5.

Encl 3 – This file contains one email with partial redactions. The redactions in this file have been reduced, but this file is still partially exempt from disclosure under FOIA Exemption 5.

Encl 4 – This file contains one email previously containing partial redactions, this is now released in full.

Encl 5 – This file contains one email that was questioned in your appeal letter. These redactions remain unchanged.

Encl 6 – This file contains one email previously containing partial redactions, this is now released in full.

All other documents previously withheld in the October 24, 2019 first interim release remain exempt from disclosure under FOIA Exemption 5. Although you cite *Rojas v. FAA*, 927 F.3d 1046 (9th Cir. 2019), we note that rehearing en banc has been granted and this case is no longer citable precedent within the 9th Circuit. *Rojas v. FAA*, 948 F.3d 952.

Second (Final) Release:

Previous correspondence indicated a total of 58 remaining responsive documents. The count of responsive documents was not correct and actually is 147 which includes mostly email correspondence and three other documents. Of the 147 documents, 24 are duplicates and will not be released, 11 of the emails are withheld in full under FOIA Exemption 5, 17 documents are released in full, 91 documents have partial exemptions under FOIA Exemption 5 that reflect the Navy's internal deliberations of pre-final reports and working versions of response to comments. The release of such internal deliberations of pre-final reports and working versions of response to comments could be harmful by discouraging the free and frank exchange of opinions or potentially result in public confusion by disclosing information that is not consistent with the outcome of the deliberative process. Two documents are partially withheld under FOIA Exemptions 5 and 6, and two documents are partially withheld under FOIA Exemptions 4 and 5.

Exemptions related to FOIA Exemption 4 [5 U.S.C. § 552(b)(4)], protects from disclosure “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” The trade secrets associated with these exemptions relate to business phone and conference call numbers which belong to our contractors and could cause competitive harm if released.

Exemptions with this release are partially exempt from disclosure under FOIA Exemption 5. Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. §552(b)(5). Exemption 5 incorporates the deliberative process privilege, which protects the decision-making process of government agencies. The deliberative process privilege promotes three

basic policies: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. The deliberative process privilege protects information that is both pre-decisional and deliberative, and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect personal opinions of the writer rather than the policy of the agency. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both pre-decisional and deliberative. They contain information which, if released to the public, would have a chilling effect on the agency's deliberative process, expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and could cause public confusion by disclosure of information that was not actually incorporated into or differs from a final agency decision. Exempt portions of responsive documents have been redacted, and the remainder of the document is released to you.

Exemptions related to FOIA Exemption 6 [5 U.S.C. § 552(b)(6)], protects from disclosure information that, if disclosed, would invade an individual's personal privacy.

The responsive and non-exempt portions of records will be released to you via FOIAonline.

You have agreed to pay an additional amount up to \$1,200 for the processing of this request. While we incurred charges above the agreed \$1,200, we waive charges above the agreed upon fee. Accordingly, please remit payment in the amount of \$1,200 to the BRAC PMO West office within 30 days. Please make check out to "United States Treasury".

In view of the above, you may consider this to be an adverse determination that may be appealed. Since you have created an account in FOIA online, you may submit an appeal directly within the web-based system. To do this, you would log in to your account, retrieve your original request, and then click on the "Create Appeal" tab in the left-hand column. The basic information from your request will be duplicated for you, and then you can type in the basis of your appeal. If you prefer to use regular mail, you may submit an appeal to:

The Department of the Navy
Office of the General Counsel (ATTN: FOIA APPEALS)
1000 Navy Pentagon, Room 5A532
Washington, DC 20350-1000

Your appeal, if any, must be transmitted (if appealing by FOIA ONLINE) or postmarked (if appealing by mail) within 90 calendar days from the date of this letter. Please be advised that a FOIA requestor has the burden of proving timely submission of an appeal. Additionally, you

must include in your appeal a statement indicating why you believe your appeal should be granted, and you are encouraged to also include a copy of your initial request and a copy of this letter.

For any further assistance regarding any aspect of your request, you have the right to contact the Department of the Navy FOIA Public Liaison, Mr. Christopher Julka, at Christopher.A.Julka@navy.mil or 703-697-0031. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-01, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

KIMBERLY A. OSTROWSKI
Director